

meets these conditions, it ceases to be an “existing collective bargaining agreement,” whether or not any or all of its terms may continue to apply by operation of law.

(c) *Formal challenge to termination.* A formal challenge to a plan termination asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement is initiated when —

(1) Any procedure specified in the collective bargaining agreement for resolving disputes under the agreement commences; or

(2) Any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law commences.

(d) *Resolution of challenge.* Immediately upon the final resolution of the challenge, the plan administrator must notify the PBGC in writing of the outcome of the challenge, provide the PBGC with a copy of any award or order, and, if the validity of the proposed termination has been upheld, advise the PBGC whether the proposed termination is to proceed. The final resolution ends the suspension period under paragraph (a) of this section.

(1) *Challenge sustained.* If the final resolution is that the proposed termination violates an existing collective bargaining agreement, the PBGC will dismiss the termination proceeding, all actions taken to effect the plan termination will be null and void, and the plan will be an ongoing plan. In this event, in a distress termination, § 4041.42(d) will apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the final resolution is that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator has notified the PBGC that the termination is to proceed, the PBGC will reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and —

(i) The termination proceeding will continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension will be effective;

(iii) Any time periods that were suspended will resume running from the date of the PBGC’s notice of the reactivation of the proceeding;

(iv) Any time periods that had fewer than 15 days remaining will be extended to the 15th day after the date of the PBGC’s notice, or such later date as the PBGC may specify; and

(v) In a distress termination, the PBGC will proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(3) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 4041.45(c).

(e) *Final resolution of challenge.* A formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(f) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.8 Post-termination amendments.

(a) *Plan benefits.* A participant’s or beneficiary’s plan benefits are determined under the plan’s provisions in effect on the plan’s termination date. Notwithstanding the preceding sentence, an amendment that is adopted after the plan’s termination date is taken into account with respect to a participant’s or beneficiary’s plan benefits to the extent the amendment—

(1) Does not decrease the value of the participant’s or beneficiary’s plan benefits under the plan’s provisions in effect on the termination date; and

(2) Does not eliminate or restrict any form of benefit available to the participant or beneficiary on the plan’s termination date.

(b) *Residual assets.* In a plan in which participants or beneficiaries will receive some or all of the plan's residual assets based on an allocation formula, the amount of the plan's residual assets and each participant's or beneficiary's share thereof is determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's allocation of residual assets to the extent the amendment does not decrease the value of the participant's or beneficiary's allocation of residual assets under the plan's provisions in effect on the termination date.

(c) *Permitted decreases.* For purposes of this section, an amendment shall not be treated as decreasing the value of a participant's or beneficiary's plan benefits or allocation of residual assets to the extent—

(1) The decrease is necessary to meet a qualification requirement under section 401 of the Code;

(2) The participant's or beneficiary's allocation of residual assets is paid in the form of an increase in the participant's or beneficiary's plan benefits; or

(3) The decrease is offset by assets that would otherwise revert to the contributing sponsor or by additional contributions.

(d) *Distress terminations.* In the case of a distress termination, a participant's or beneficiary's benefit liabilities are determined as of the termination date in the same manner as plan benefits under this section.

Subpart B—Standard Termination Process

§ 4041.21 Requirements for a standard termination.

(a) *Notice and distribution requirements.* A standard termination is valid if the plan administrator—

(1) Issues a notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(2) Issues notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(3) Files a standard termination notice with the PBGC in accordance with § 4041.25;

(4) Distributes the plan's assets in satisfaction of plan benefits in accordance with § 4041.28(a) and (c); and

(5) In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), issues the notices required by § 4041.23(c), § 4041.24(f), and § 4041.27(a)(2) in accordance with such sections.

(b) *Plan sufficiency.* (1) *Commitment to make plan sufficient.* A contributing sponsor of a plan or any other member of the plan's controlled group may make a commitment to contribute any additional sums necessary to enable the plan to satisfy plan benefits in accordance with § 4041.28. A commitment will be valid only if—

(i) It is made to the plan;

(ii) It is in writing, signed by the contributing sponsor or controlled group member(s); and

(iii) In any case in which the person making the commitment is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.41(c)(1) or (c)(2), the commitment is approved by the court before which the liquidation or reorganization proceeding is pending or a person not in bankruptcy unconditionally guarantees to meet the commitment at or before the time distribution of assets is required.

(2) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits in accordance with § 4041.28. Any such alternative treatment of the majority owner's plan benefits is valid only if—

(i) The majority owner's election is in writing;

(ii) In any case in which the plan would require the spouse of the majority owner to consent to distribution of the majority owner's receipt of his or her plan benefits in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election;

(iii) The majority owner makes the election and the spouse consents during the time period beginning with the